BALCRON OIL CO.

IBLA 85-373 Decided September 30, 1986

Appeal from a decision of Montana State Office, Bureau of Land Management, upholding assessments of liquidated damages for incidents of noncompliance.

Vacated and remanded.

1. Oil and Gas Leases: Civil Assessments and Penalties

An assessment for failure to file monthly reports of operations in a timely manner pursuant to 43 CFR 3163.3(h), may be vacated by the Board on appeal in view of the suspension of that regulation and the change in Departmental policy that such assessments should automatically be levied.

APPEARANCES: W. R. Cronoble, Balcron Oil Company, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Balcron Oil Company has appealed from a decision of the Montana State Office, Bureau of Land Management (BLM), dated January 22, 1985, upholding the assessment of $700 in liquidated damages for seven incidents of noncompliance involving failure to file timely reports of operations on seven communitization agreements (NRM-1259, NRM-1757, NCR-181, NCR-182, NCR-448, NCR-467, NCR-598), embracing Federal oil and gas leases. Appellant is the designated operator under the communitization agreements. 1/

By letter dated January 7, 1985, the Area Manager, Great Falls Resource Area, BLM, notified appellant it was being assessed $700 for failure to submit timely its monthly reports of operations (Form 3160-6) for October 1984 with respect to the seven communitization agreements, pursuant to 43 CFR 3163.3(h). Each failure to submit a monthly report was treated as a separate incident of noncompliance and individually assessed $100.

1/ Each of the communitization agreements includes land within a Federal oil and gas lease. These communitization agreements and the corresponding leases are as follows: NRM-1259--M-21738-A; NRM-1757--M-22172; NCR-181--M-22172; NCR-182--M-22172; NCR-448--M-21738; NCR-467--M-22172; and NCR-598--M-23965. Each agreement provides that the operator "shall furnish the Secretary of the Interior, or his authorized representative * * * monthly reports of operations * * * as specified in the applicable oil and gas operating regulations."

On January 14, 1985, appellant requested BLM to waive the assessment. Appellant stated it had filed the October 1984 reports of operations "sometime during the month of December, probably around December 20, 1984" and it has "timely" filed all past reports. Appellant noted it had received a January 3, 1985, "courtesy letter" from BLM which informed it of a new time restriction, apparently referring to the requirement that monthly reports be received by BLM on or before the 10th day of the second month following the month of production, and that it acted in accordance with that restriction in filing its November 1984 reports of operations. Appellant's letter was treated as a request for a technical and procedural review pursuant to 43 CFR 3165.3.

In its January 22, 1985, decision, BLM concluded the Area Manager had correctly assessed $700 for appellant's failure to submit timely its October 1984 reports of operations, which were received by BLM on December 24, 1984, i.e., "14 days after the required filing date." BLM stated the assessment was "consistent with 43 CFR 3163.3(h)," and it could not consider appellant's "good faith efforts."

In its statement of reasons for appeal, appellant contends the "fine" is "excessive" considering the fact that the violation involved the late filing of informative data only and did not involve funds due the Federal Government. Appellant contends it had always filed timely "prior to the October non-compliance." Appellant also requests consideration of its long history of cooperation with BLM officials. Appellant implies the assessment for the October filings is unfair in light of the BLM letter of January 3, 1985, notifying it of the time deadline.

[1] The applicable regulation, 43 CFR 3162.4-3, provides that a separate monthly report of operations for each Federal lease "shall be filed * * * with the authorized officer on or before the 10th day of the second month following the production month * * * each month until the lease is terminated or until omission of the report is authorized by the authorized officer." 2/ The obligation to file monthly reports of operations on Federal leases has long been a requirement of the Department. See 30 CFR 221.60 (1959); see also 52 I.D. 18 (1926). 3/ The current requirement to file on or before the 10th day of the second month following the production month was promulgated effective August 12, 1983. 43 CFR 3162.4-3 (48 FR 36586 (Aug. 12, 1983)). 4/

2/ 43 CFR 3162.4-3 also provides that an extension of time may be granted by the authorized officer for the filing of the required reports.

3/ The regulation formerly required that a separate report of operations be made "for each calendar month, beginning with the month in which drilling operations are initiated" and filed "on or before the 6th day of the succeeding month." See 30 CFR 221.60 (1981).

4/ The supplementary information accompanying the promulgation of this requirement stated: "Publication of this rulemaking as a proposal for

The regulation at 43 CFR 3163.3 provides for the assessment of liquidated damages for certain incidents of noncompliance, including the "failure to * * * file required reports * * * as required by the regulations in this part [43 CFR Part 3160 - Onshore Oil and Gas Operations]." 43 CFR 3163.3(h). The designated amount of liquidated damages for the latter violation is $100. Id.

The January 3, 1985, BLM letter, to which appellant refers, stated the monthly report of operations "must be received by the appropriate [BLM] office (Lewiston or Great Falls) on or before the 10th day of the second month following the production month" and, "in accordance with 43 CFR 3163.3(h), failure to meet this deadline will result in an assessment of $100 per report." BLM also stated "[w]e no longer have the discretion to allow a grace period for late filings." Appellant asserts that it was not aware of the filing deadline prior to receipt of the January 3, 1985, BLM letter. However, the current deadline has appeared in Departmental regulations since August 12, 1983, and appellant is presumed to have knowledge of duly promulgated regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947).

Notwithstanding the foregoing, we note the assessment regulation at 43 CFR 3163.3(h), was suspended by notice printed in the Federal Register (50 FR 11517 (Mar. 22, 1985)). This suspension was implemented by BLM Instruction Memorandum No. 85-384 (Apr. 16, 1985), which provided in relevant part:

> Enclosed is a copy of the Notice of Intent to propose rulemaking which was published in the Federal Register on March 22, 1985. As stated in this notice, the following actions are hereby taken:
>
> > The assessment for noncompliance provisions under 43 CFR 3163.3(c) through (j) are suspended, except where actual loss or damage can be ascertained.

BLM's proposed rulemaking, published on January 30, 1986, at 51 FR 3882, would eliminate automatic assessments for failure to file reports in a timely manner under 43 CFR 3163.3(h). In Yates Petroleum Corp., 91 IBLA 252 (1986), we considered the effect of the proposed rule on assessments for noncompliance under 43 CFR 3163.3(h) and stated:

> The proposed rules would eliminate the assessment for failure to * * * file reports in a timely manner under 43 CFR 3163.3(h). In the preamble to the proposed regulations BLM states: "Assessment under the various Acts authorizing the leasing of minerals

---

fn. 4 (continued)
public comment is considered unnecessary since it is a redesignation of existing regulations. No change has been made in the substance of the regulations * * *." 48 FR 36583 (Aug. 12, 1983).

> would be modified by the proposed rulemaking to eliminate automatic assessments for noncompliance involving violations of §§ 3163.3(d), (e), (g), (h), and (j) of the existing regulations. (Emphasis added.) 51 FR 3887 (Jan. 30, 1986). [5/] Therefore, under the proposed rules BLM would not automatically assess Yates but would be required to give Yates notice that it had * * * violated the reporting requirements.
>
> We recognize that * * * 43 CFR 3163.3(h) * * * [was] in effect at the time BLM took its action, and neither the suspension nor the proposed regulations are clearly dispositive herein. They do, however, reflect the Department's present policy concerning the levy of an assessment for failure to comply with the identification and the reporting requirements. In the past this Board has applied the present BLM policy to a pending matter, if to do so would benefit the affected party, and if there were no countervailing laws, public policy reasons, or intervening rights. Somont Oil Co., Inc., 91 IBLA 137 (1986). For that reason, we vacate the decision to levy assessments pursuant to * * * 43 CFR 3163.3(h). [Footnote omitted.]

91 IBLA at 263-64. Accord, Ward Petroleum Corp., 93 IBLA 267 (1986). We find the ruling in Yates Petroleum Corp., supra, to be controlling in this case. Accordingly, the decision appealed from is vacated and the case is remanded.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is vacated and the case is remanded.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Will A. Irwin
Administrative Judge

R. W. Mullen
Administrative Judge

5/ The imposition of automatic assessments was a policy determination, and not a statutory or regulatory requirement. See Lyco Energy Corp., 92 IBLA 81, 85 (1986).